

(15)

Central Administrative Tribunal  
Principal Bench

O.A. No. 2676 of 2000  
M.A. No. 1664 of 2001  
M.A. No. 1665 of 2001  
M.A. No. 2134 of 2001  
M.A. No. 1761 of 2001

New Delhi, dated this the 4<sup>th</sup> December, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Virender Kumar  
Working as Chemical and Metallurgical Assistant,  
S/o late Shri Jagan Nath,  
House No. 59/9, New Colony,  
Sonapat (Haryana). .. Applicant

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through  
the General Manager,  
Northern Railway, Baroda House,  
New Delhi.
2. The Dy. Chief Chemist & Metallurgist,  
Northern Railway,  
Diesel Shed, Tughlakabad.
3. The Chemist & Metallurgist,  
Northern Railway,  
Charbagh (Workshop),  
Lucknow, U.P.
4. Sr. Divisional Personnel Officer,  
Northern Railway, D.R.M. Office,  
New Delhi.
5. Shri R.N. Srivastava,  
Chemical & Metallurgical Assistant I, Railway  
Workshop,  
Kalka, Haryana.
6. Shri Madan Lal,  
Chemical and Metallurgical Assistant I,  
Northern Railway, Diesel Shed,  
Shakur Basti,  
Delhi-110034. .. Respondents

(By Advocate: Mrs. Meera Chhibber)

ORDER

S.R. ADIGE, VC (A)

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Applicant impugns respondents' order dated  
7.5.99 (Ann. A-1) and dated 29.4.99 (Annexure A-2).

He seeks promotion as C.M.A. Grade I w.e.f. 1990-91 and placement above R-5 & 6 in the seniority list, with consequential benefits.

2. In a panel of Laboratory Assistants prepared in December, 1979, applicant figured at Sl. No. 7, while respondents 5 and 6 at Sl. No. 28 and 9. Applicant was confirmed as Lab. Assistant on 9.4.82 while respondents 5 and 6 on 10.4.82 and 12.4.82 respectively.

3. The next promotional level is that of Junior Chemical and Metallurgical Assistants (JCMA). On 19.7.84, applicant as well as respondents 5 and 6 were working as JCMA's on purely ad hoc basis when one Shri Asif Raza came to join as a regular directly recruited JCMA. This necessitated one reversion. Applicant though senior was reverted. He filed a Civil Suit on 4.8.84 and secured a status quo order on 22.8.84. The Divisional Personnel Officer realised his mistake and ordered repromotion of applicant but this could not be done immediately because of the status quo order. The status quo order was subsequently vacated and applicant was promoted as JCMA on ad hoc basis on 2.12.85.

4. There upon respondents held selections for regular appointment to the post of JCMA. Applicant cleared <sup>the</sup> written test held in July, 1986, but in the interview he failed, as a result of which

he was not selected. He filed O.A. No. 765/86 on 11.9.86 against his non-selection. Meanwhile the Civil Suit was transferred to the Tribunal for disposal and was renumbered as T.A. No. 13/86.

5. O.A. No. 765/86 as well as T.A. No. 13/86 were dismissed on 5.2.92 for non-joinder of proper and necessary parties.

6. Thereupon applicant filed O.A. No. 149/93. Meanwhile applicant had been promoted as JCMA on regular basis vide order dated 16.1.98, as a result of the written test, held on 20.6.97 and the viva voce held on 9.9.97. Applicant's grievance in that O.A. was that he should be declared senior to R-5 Shri R.N. Shrivastava and R-6 Shri Madan Lal.

7. Noting that applicant's representation for fixation of seniority was pending with respondents, the Tribunal in its order dated 7.12.98 directed respondents to consider applicant's representation in accordance with the contents of their own reply to the O.A. which had been noted in the aforesaid order.

8. Pursuant to the aforesaid order dated 7.12.98, respondents disposed of applicant's representation vide impugned order dated 7.5.99 (Annexure A-1). In that order it was noted that applicant as well as R-5 and R-6 were working as

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JCMas on ad hoc basis and applicant was senior to R-5 and 6 as Lab. Assistants. Thereupon when one reversion was necessitated owing to the appointment of Shri Asif Raza as JCMA, applicant who was senior to R-5 and 6 should not have been reverted, and this wrong decision was subsequently corrected pursuant to the Tribunal's order dated 7.12.98 by <sup>notional pay nfrahm</sup> ~~leave of~~ order dated 29.4.99. As regards regular promotion to the grade of JCMA it was pointed out that applicant's failure to be selected as JCMA on regular basis in the selection held in 1986 was because he failed to secure minimum qualifying marks in professional ability, and in the aggregate, and his assumption that had he been shown senior to R-5 and 6 he would have been selected, was incorrect. In this order dated 7.5.99 it was further stated that if applicant was still aggrieved by the contents of the same he could file a representation. Applicant filed a representation <sup>on 14.5.99 (Ann A-4),</sup> but did not receive any satisfactory response.

9. There<sup>abouts</sup> ~~upon~~ applicant filed C.P. No. 193/99 alleging only partial implementation of the Tribunal's order dated 7.12.98 in O.A. No. 149/93 and misrepresentation on the part of respondents. That C.P. was dismissed by order dated 9.12.99 in the light of the Hon'ble Supreme Court's ruling in J.S. Parihar Vs. G. Duggar & Others JT 1996 (9) SC 608 which laid down that once there was an order passed by the Government on the basis of the

directions issued by the Court (in this case respondents had passed order dated 7.5.99) the same could be assailed separately in the appropriate forum but could not be considered wilful violation of the Court's order. While dismissing the C.P., the Bench had occasion to peruse the selection proceedings for regular promotion to the post of JCMA held on 18.7.86 and 31.7.86 and observed that respondents' contentions that applicant had appeared in the selection test but could not qualify because he did not obtain the minimum qualifying marks in professional ability as well as in the aggregate were borne out of facts.

10. Applicant has now filed the present O.A.

11. What emerges from the foregoing discussion is that while R-5 and 6 were promoted as JCMA's on regular basis as a result of the selections held in 1986, applicant who participated in the same failed to get promoted because he did not secure the minimum qualifying marks and was eventually promoted as JCMA on regular basis only in 1998. As per rules, those who qualify and are empanelled as a result of an earlier selection rank senior to those who qualify and are empanelled through a subsequent selection. As respondents 5 and 6 qualified and were promoted as JCMA's on regular basis much before applicant qualified and was promoted, ~~empanelled~~ <sup>empanelled</sup> so they will

naturally rank senior to him and he cannot claim seniority above R-5 and 6 as JCMA much less as CMA, <sup>Furthermore</sup> ~~merely because~~ a coordinate Division Bench while disposing of C.P. No. 193/93 has already perused the selection proceedings for regular promotion to the post of JCMA held in July, 1986 and found that applicant who participated in the same, was not promoted, not because of any doubt as to his seniority as Lab. Assistant, but because he failed to obtain the minimum qualifying marks in professional ability as well as the aggregate.

12. We shall now deal with the M.As filed by applicant in this case.

13. M.A. No. 1664/2001 has been filed for early hearing of this case. As this case has been heard, no orders are separately required on this M.A.

14. M.A. No. 1665/2001 has been filed seeking a direction to R-1 to 4 to file their own affidavits as according to applicant Shri Satya Prakash, DPO in DRM, Delhi Office who has filed counter reply on behalf of R-1 to 4 has not filed his own affidavit, nor have R 1 to 4 filed their own affidavits. We have no reason to doubt that Shri Satya Prakash is competent to file the reply on behalf of R 1 to 4, and indeed the facts referred to in the foregoing discussion are available from the Tribunal's own orders passed from time to time in

O.As/CPs filed by applicant earlier, copies of which are on record, and do not even necessitate any reference to the reply of R 1 to 4. Hence no orders are separately required on M.A. No. 1665/2001.

15. In M.A. No. 1761/2001 a direction has been sought to restrain respondents from compelling applicant to proceed on transfer from New Delhi to Kalka. This M.A. came up on 21.8.2001 on which date an interim direction was issued to respondents restraining them from compelling applicant to proceed on transfer out of Delhi. That interim order was extended from time to time. An M.A. in an O.A. itself survives till such time as final orders are passed in the O.A., and as we are now disposing of the O.A. itself finally, no separate orders are required on the M.A. In any case if applicant is aggrieved by his transfer to Kalka, that is a separate cause of action which he can assail separately in accordance with law, if so advised.

16. In M.A. No. 2134/2001 applicant seeks a direction to restrain respondents from deducting any amounts from applicant's pay of September, 2001, payable in October, 2001 till the disposal of the O.A. By interim order dated 25.9.2001, after noticing applicant's contention that despite his producing an M.C. from a Railway doctor, respondents had issued order dated 20.9.2001 deducting salary for 6 days from his pay for the month of September 2001

without giving him an opportunity of being heard, notice to respondents was issued on the M.A. and meanwhile respondents were directed not to make any recoveries from his pay. This M.A. can be and is disposed of with a direction to respondents that any recoveries from applicant's salary shall be made only in accordance with law, after giving applicant a reasonable opportunity of being heard, because any such recovery order involves civil consequences.

17. In the pleadings considerable emphasis has been laid on behalf of applicant, on affidavits filed by respondents earlier, that applicant was reverted from the post of JCMA which he was occupying on ad hoc basis, upon the appointment of Shri Asif Raza because he happened to be <sup>the</sup> junior most. ~~word~~. ~~As per order~~. It was stoutly contended that criminal proceedings should be initiated against those at fault for filing such a false affidavit, because respondents themselves had conceded that applicant was not the junior most Lab. Assistant and was indeed senior to R-5 & 6 as Lab. Assistant at the time when all three were working as JCMA's on ad hoc basis, and in fact the DPO had himself realised the error and had subsequently repromoted applicant as JCMA on ad hoc basis. There can be no doubt that filing of an affidavit which is incorrect on facts is a serious matter, and parties are expected to be extremely careful in ensuring that only correct facts are sworn in an affidavit. However, we notice that

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these affidavits were before a coordinate Division Bench of the Tribunal in O.A. No. 149/93 which after full application of mind ~~is is~~ to applicant's reversion from the post of JCMA which he was holding on ad hoc basis, despite his not being the junior most, had noted that respondents had realised their mistake and had sought to correct the same. It is, therefore, clear that the coordinate Division Bench had satisfied itself that there were no malafides involved, warranting initiation of criminal proceedings against respondents because otherwise it would itself have ordered initiation of appropriate action against those at fault. We see no good reasons to take a different view and <sup>only reiterate</sup> that parties filing sworn affidavits in litigation need to be extremely careful about the correctness and accuracy of the facts contained therein.

18. Subject to what has been stated above the O.A. warrants no interference, and is dismissed. No costs.

A. Vedavalli  
4/12/2001  
(Dr. A. Vedavalli)  
Member (J)  
karthik

S. R. Adige  
(S. R. Adige)  
Vice Chairman (A)